



DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 212

[CIS No. 2699-21; DHS Docket No.: USCIS-2021-0018]

RIN 1615-AC75

International Entrepreneur Program: Automatic Increase of Investment and Revenue

Amount Requirements

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Final rule; technical amendment.

SUMMARY: On January 17, 2017, DHS published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities who can demonstrate through evidence of substantial and demonstrated potential for rapid business growth and job creation that they would provide a significant public benefit to the United States. The 2017 regulation provided that the investment and revenue amount requirements would automatically adjust every three years by the Consumer Price Index for All Urban Consumers (CPI-U). DHS is issuing this rule to inform the public of the increased amounts that will take effect at the start of Fiscal Year 2022 and to revise the regulations to accurately reflect the updated investment amounts.

DATES: This final rule is effective on October 1, 2021.

FOR FURTHER INFORMATION CONTACT: For technical questions only: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20588-0009, telephone (240) 721-3000 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1-877-889-5627

(TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background:

A. The International Entrepreneur Program

On January 17, 2017, the Department of Homeland Security (DHS) published a final rule with new regulatory provisions guiding the use of parole on a case-by-case basis with respect to entrepreneurs of start-up entities. These entrepreneurs would be eligible for consideration of parole if they could demonstrate a significant public benefit to the United States through substantial and demonstrated potential for rapid business growth and job creation.¹ The final rule was to be effective July 17, 2017.²

On July 11, 2017, DHS published a rule delaying the effective date to March 14, 2018.³ Two individuals, two businesses, and the National Venture Capital Association sued DHS, challenging the delay rule for violating the Administrative Procedure Act's notice and comment requirement at 5 U.S.C. 553. The D.C. Circuit, agreeing with the plaintiffs, vacated the delay rule on December 1, 2017, allowing the rule to go into effect without further delay.⁴

The regulatory provisions established by the January 17, 2017 rule, which were implemented after the delay rule was vacated on December 1, 2017,⁵ provide specific investment and revenue amounts that can support an application for parole and re-parole.⁶ The rule also stated that the investment and revenue amounts will be automatically adjusted every 3 years by the CPI-U and posted on the USCIS website at www.uscis.gov and investment and revenue amounts adjusted under 8 CFR 212.19(l) will apply to all applications filed on or after

¹ 82 FR 5238 (Jan. 17, 2017).

² *Id.*

³ 82 FR 31887 (July 11, 2017).

⁴ *Nat'l Venture Capital Assoc., et al., v. Duke*, 291 F. Supp. 3d 5 (D.D.C. Dec. 1, 2017).

⁵ On May 29, 2018, DHS published a notice of proposed rulemaking (NPRM) to remove the international entrepreneur program from DHS regulations, but never finalized the proposal. *See* 83 FR 24415 (May 29, 2018). Instead, on May 11, 2021, DHS withdrew the NPRM. *See* 86 FR 25809 (May 11, 2021).

⁶ *See* 8 CFR 212.19(a)(5), (b)(2)(ii), and (c)(2)(ii).

the beginning of the fiscal year for which the adjustment is made.⁷

B. Investment and Revenue Increase for Fiscal Year 2022

The automatic adjustment required by 8 CFR 212.19(l) affects the amounts stated in 8 CFR 212.19(a)(5) (no less than \$600,000 in aggregate investments by the qualifying investor and at least \$500,000 in revenue by at least two entities), (b)(2)(ii)(B) (at least \$250,000 in investments or at least \$100,000 in government awards or grants), and (c)(2)(ii)(B) (at least \$500,000 in additional investment or revenue). DHS has calculated the new investment and revenue amounts and revised the applicable provisions in this final rule.⁸ According to the CPI-U Calculator available from the Department of Labor's website, https://www.bls.gov/data/inflation_calculator.htm, \$100,000 in December 2017 had a present dollar value of \$105,659 in December 2020 (Fiscal Year 2021), three years later. The same calculator reflects \$250,000 in December 2017 had a present dollar value of \$264,147 in December 2020, that \$500,000 in December 2017 had a present dollar value of \$528,293 in December 2020, and that \$600,000 in December 2017 had a present dollar value of \$633,952 in December 2020. In light of these automatic adjustments in December 2020, beginning in Fiscal Year 2022, under 8 CFR 212.19(b)(2)(ii)(B) as updated by this final rule, an applicant may be considered for initial parole if he or she demonstrates that his or her entity has received, within 18 months immediately preceding the filing of an application for initial parole, either a qualified investment amount of at least \$264,147 from one or more qualified investors or an amount of at least \$105,659 through one or more qualified government awards or grants.⁹ In the alternative, an applicant who partially meets one or both of those criteria may still qualify for further

⁷ The regulatory text stated that USCIS would provide notice of the automatic adjustments in the Federal Register and on its website prior to the beginning of the fiscal year in which the change would take effect. While DHS did not discuss these automatic adjustments in the preamble to the final rule, DHS explained in the proposed rule that it believed that automatically adjusting the minimum dollar amounts by the CPI-U every 3 years will maintain investment and revenue requirements at an appropriate level in relation to future economic conditions. DHS also believed automatically adjusting the minimum dollar amounts would be more manageable operationally for DHS and less burdensome to applicants. *See, generally*, 81 FR 60129 (Aug. 31, 2016).

⁸ DHS rounded these amounts to the nearest dollar.

⁹ 8 CFR 212.19(b)(2)(ii)(B).

consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation.¹⁰ Similarly, revised 8 CFR 212.19(c)(2)(ii)(B) provides that an applicant may be considered for re-parole if he or she establishes that during the initial parole period, his or her entity:

- Received at least \$528,293 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;
- Created at least 5 qualified jobs with the start-up entity during the initial parole period; or
- Reached at least \$528,293 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.¹¹

In the alternative, an applicant who partially meets one or more of the criteria in paragraph (c)(2)(ii)(B) of this section may still qualify for consideration by providing other reliable and compelling evidence of the start-up entity's substantial potential for rapid growth and job creation. Finally, revised 8 CFR 212.19(a)(5) defines a qualified investor as an individual or investor who, among other requirements, has made investments in start-up entities comprising a total of no less than \$633,952 in a 5-year period and at least two of those entities created at least 5 jobs or generated at least \$528,293 in revenue with an average annualized revenue growth of at least 20 percent.

The revised amounts in this final rule are also posted on the USCIS website <https://www.uscis.gov>.

II. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule merely updates the investment and

¹⁰ 8 CFR 212.19(b)(2)(iii).

¹¹ 8 CFR 212.19(c)(2)(ii)(B).

revenue amounts to account for inflation consistent with the regulatory requirement at 8 CFR 212.19(l) providing that these amounts will automatically adjust every three years by the Consumer Price Index. This amendment is a technical change to ensure that the regulation accurately reflects these updated investment amounts, automatically adjusted for inflation, and avoids potential confusion for applicants and other interested parties regarding the applicable investment amounts under 8 CFR 212.19. Therefore, notice and comment for this rule is unnecessary and contrary to the public interest because the rule has no substantive impact and is simply a ministerial update to the regulations. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking for any proposed rule.” Because this rule is being issued as a final rule, on the grounds set forth in section II.A., a regulatory flexibility analysis is not required under the RFA.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may directly result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. The inflation-adjusted value of \$100 million in 1995 is approximately \$170 million in 2020 based on the

Consumer Price Index for All Urban Consumers (CPI-U).¹² This final rule does not contain such a mandate. The requirements of title II of UMRA, therefore, do not apply, and DHS has not prepared a statement under UMRA.

D. Executive Order 12866

This action does not require review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563. As previously discussed, DHS has the authority to adjust the investment and revenue amount requirements according to the CPI-U.

The population that may be affected by this rule are the applicants that file for Form I-941, Application for Entrepreneur Parole, after this rule becomes effective. Table A presents the historical annual receipts for Form I-941 received for Fiscal Years 2018 through 2021. During this period, 41 total Form I-941 applications have been filed with USCIS, and DHS estimates that an annual average of 11 Form I-941 applications were received by USCIS.

Table A: Annual Receipts for Form I-941, Application for Entrepreneur Parole, for Fiscal Years FY18 – FY21.¹³						
Form	2018	2019	2020	2021	Total	4-Year Annual Average Receipts
Form I-941	20	7	1	13	41	11

Source: USCIS, Immigrant Program Office, Claims 3 (C3) database (as of August 17, 2021).)

E. Executive Order 13132 (Federalism)

The rule will not have substantial direct effects on the States, on the relationship between

¹² See U.S. Department of Labor, Bureau of Labor Statistics, “Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month,” available at <https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202103.pdf> (last visited May 5, 2021). Calculation of inflation: 1) Calculate the average monthly CPI-U for the reference year (1995) and the current year (2019); 2) Subtract reference year CPI-U from current year CPI-U; 3) Divide the difference of the reference year CPI-U and current year CPI-U by the reference year CPI-U; 4) Multiply by 100 = [(Average monthly CPI-U for 2020 – Average monthly CPI-U for 1995) / (Average monthly CPI-U for 1995)] * 100 = [(258.811 – 152.383) / 152.383] * 100 = (106.428 / 152.383) * 100 = 0.6984 * 100 = 69.84 percent = 70 percent (rounded). Calculation of inflation-adjusted value: \$100 million in 1995 dollars * 1.70 = \$170 million in 2020 dollars.

¹³ Data covering the period December 2017 – August 12, 2021.

the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3512, DHS must submit to the Office of Management and Budget (OMB) for review and approval, any reporting requirements inherent in a rule, unless they are exempt. This final rule will revise USCIS Form I-941. The information collected through the I-941 is used by USCIS to assist in determining if an applicant is eligible for discretionary grant of parole under 8 CFR 212.19. As provided under 5 CFR 1320.13, USCIS is requesting emergency processing for this collection of information as specified in the Paperwork Reduction Act and its implementing regulations. USCIS certifies that the requirements of 5 CFR 1320.13(a) are met and that:

- The collection of information is needed immediately and is essential to the mission of the agency.
- The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information.

Overview of this information collection:

- (1) Type of Information Collection: Revision of a Currently Approved Collection.
- (2) Title of the Form/Collection: Application for Entrepreneur Parole.
- (3) Agency form number, if any, and the applicable component of the DHS sponsoring the collection: Form I-941; USCIS.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: Individuals or households. Entrepreneurs can use this form to make an initial request for parole based upon significant public benefit; make a subsequent request for parole for an additional period; or file an amended application to notify USCIS of a material change.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: The estimated total number of respondents for the information collection I-941 is 2,940 and the estimated hour burden per response is 4.7 hours. The estimated total number of respondents for the biometric processing is 2,940 and the estimated hour burden per response is 1.17 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden associated with this collection is 17,258 hours.

(7) An estimate of the total public burden (in cost) associated with the collection: The estimated total annual cost burden associated with this collection of information is \$1,440,600.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated in the preamble, DHS amends part 212 of title 8 of the Code of Federal Regulations (8 CFR part 212) as set forth below.

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The general authority citation for part 212 continues to read as follows:

Authority: 6 U.S.C. 111, 202(4) and 271; 8 U.S.C. 1101 and note, 1102, 1103, 1182 and note, 1184, 1187, 1223, 1225, 1226, 1227, 1255, 1359; section 7209 of Pub. L. 108-458 (8 U.S.C. 1185 note); Title VII of Pub. L. 110-229 (8 U.S.C. 1185 note); 8 CFR part 2; Pub. L. 115-

218.

* * * * *

2. In § 212.19, revise paragraphs (a)(5)(i) and (ii), (b)(2)(ii)(B)(I) and (2), and (c)(2)(ii)(B)(I) and (3) to read as follows:

§ 212.19 Parole for entrepreneurs.

(a) * * *

(5) * * *

(i) The individual or organization made investments in start-up entities in exchange for equity, convertible debt, or other security convertible into equity commonly used in financing transactions within their respective industries comprising a total in such 5-year period of no less than \$633,952; and

(ii) Subsequent to such investment by such individual or organization, at least 2 such entities each created at least 5 qualified jobs or generated at least \$528,293 in revenue with average annualized revenue growth of at least 20 percent.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * *

(I) Received, within 18 months immediately preceding the filing of an application for initial parole, a qualified investment amount of at least \$264,147 from one or more qualified investors; or

(2) Received, within 18 months immediately preceding the filing of an application for initial parole, an amount of at least \$105,659 through one or more qualified government awards or grants.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) * * *

(1) Received at least \$528,293 in qualifying investments, qualified government grants or awards, or a combination of such funding, during the initial parole period;

* * * * *

(3) Reached at least \$528,293 in annual revenue in the United States and averaged 20 percent in annual revenue growth during the initial parole period.

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Alejandro N. Mayorkas,
Secretary of Homeland Security.

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